



File No. S. Bij 249
Legal DEPARTMENT
A BRANCH

Subject: Civil Suit No. 275 of 1948

1) Fulchand Gulabchand - Plff.
versus

2) The Province of Bombay - Def.

P-7-E.

File No.
S. Bij 249

C O N T E N T S.

Legal Department File No. 5:..Bijapur 2/49

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Suits Bijapur.

C. S. No. 275 of 1948.

Fulchand, Gulabchand.

vs.

Province of B'bay.

Statement of the case

chronological, Statement of
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(A-)

A ~~very~~ statement of the case.

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" A private godown building of the dimensions of L. B. H. 44'x41'x20' having a capacity of about 8000 bags owned by one Fulchand Gulabchand Doshi of Indi, Taluka Indi, District Bijapur, was taken on hire on rental of Rs.25/- per month in the year 1943 and the rent was paid to the owner at the above rate for that year. Subsequently, on a request made by the owner the rent was raised to Rs.30/- P.M. in the year 1944.

During the first two years of its occupation i.e. in 1943 and 1944 jowar was stored in bags in the godown. But in the year 1945 the jowar stock of about 6000 bags was stored in bulk in the godown upto a height of 15' probably with a view to avoid deterioration of jowar if stored in bags.

It is but natural that the grains stored in bulk will swell a little as in the case of storage of grains in pits. After a lapse of some days, the Mamlatdar of Indi during the course of his visit inspected the godown and noticed that the north-eastern portion of the wall of the godown in question had bulged out on account of the swelling of the grain stored in it in bulk and also a crack in the said wall was noticed then only by him. He immediately reported the facts to the District Magistrate on 3-10-1945 soliciting orders for removal of the grains stored in bulk in that godown. The District Magistrate accordingly directed the Mamlatdar on 5-10-1945 to remove the grains stored in bulk from that godown immediately.

Thereafter as late as 17-6-1946, the owner of the godown Mr. Doshi, (Plaintiff) sent a notice under Section 80 C.P.C. to the Collector of his intention to file a suit against Government claiming compensation of ~~Rs.1200/-~~ Rs.1200/- in case the Government was not prepared to build the damaged wall or grant him the cost of the damages viz: Rs.1200/- . On making thorough and detailed enquiries into the matter, through the Prant Officer and the Executive Engineer, it was noticed that the main reason for the crack in that particular part of the ~~godown~~ godown was that the wall in which the damage was noticed was only 1'-3" in breadth whereas the other walls were 2' to 4'-3" in breadth and that this fact was not at all brought to the notice of the lessee i.e. the local authorities viz: the Mamlatdar and the godown staff who were unaware of it, while storing the grains in bulk nor could they discover the material defect with ordinary care.

The District Government Pleader, Bijapur who was then consulted in the matter opined that the lessor was bound to disclose to the lessee any material defect in the property with reference to its intended use of which the former was and the latter was not aware and which the latter could not with ordinary care discover the defect viz: that wall in question was 1'-3" in width while the remaining three walls were 2' and even more. He further stated that as the lessor was aware of it while the local officers were not aware of it and could not be aware of it nor were they made aware of it by the lessor and further as the godown was used for the purpose for which it was taken on lease viz: for storing jowar (without reference to the method of storing whether in bags or in bulk), the lessor cannot claim any compensation and that in view of the estimate of the cost of building the wall made by the Executive Engineer at Rs.500/-, the claim put in

by the owner (plaintiff) was very excessive.

Thus after a full consideration the plaintiff's claim, and in view of the above circumstances, was rejected and he was informed accordingly on 8-1-1947 under this office No.G.D.N.172." (11) .

Pr C 2818748
for Dist: Magistrate
Bijapur

explanation

This is a suit for ~~damages~~ for damage caused to a wall of a godown belonging to the plaintiff. The godown was taken on hire by the D.M. for the purpose of storing jawar. The plaintiff knew the purpose for which the godown was taken. Due to the pressure of the grain from the inside a section of the wall bulged out and cracked. The godown was immediately vacated. The plaintiff then claimed Rs.1,200 as damages. The Executive Engineer and the District ~~Magistrate~~ *Sub Collector* were directed to make enquiries into the cause of the damage. The Ex. Engineer, who made a personal inspection of the godown, reported that the wall had cracked due to pressure of loose corn previously stored, that the cracked portion would have to be demolished and rebuilt, the cost of which would come to about Rs.500. He recommended that the owner might do that work and Govt. might pay the actual cost up to Rs.500. The Prant Officer made a different report. He stated that the damaged part of the wall was only 1' 3" in thickness while the remaining three walls were 2' to 4' 3" in thickness and that the damage was due to the fact that the thinnest part of the wall could not withstand the pressure of the grain. On this ground and after consulting the D.G.P., the District Magistrate has proposed to defend the suit on the ground that this was a material defect which was not known to the Govt. officer and they could not have known it with ordinary care, that the plaintiff was bound under section (58a) of the Transfer of Property Act to disclose this fact to the local officers and that, as he did not do so, he is not entitled to any compensation.

It is significant to observe that the Ex. Engineer who personally inspected the building and whose opinion can certainly be regarded as more authoritative than that of the Prant Officer, has said nothing about one

wall being thinner than the rest. It is further admitted by the D.M. that the wall cracked because the loose grain stored inside the godown had swollen and thereby resulted in an increased pressure from inside. It is also admitted that, if the grain had not been kept loose but stored up in bags, there would have been no swelling. The damage was, therefore, due as much to the pressure caused by the swelling of the grain from inside as it was due to the thinness of the particular wall. Besides, it is doubtful whether a 15" thick wall could be regarded as a material defect in the property which the owner was bound to disclose to the lessee. It is submitted that, instead of fighting this litigation, the best course for Govt. would be to make reasonable repairs of the damaged wall through the agency of the P.W.D. If this is done, the plaintiff will have no grievance. If this course is not to be adopted, the defence of the suit may be sanctioned on the lines of the appended brief.

It is pointed out by Mr. A. that the disclosure does not amount to an implied covenant of fitness. (p. 598)

Re
4/11/48

R L A I agree that in such matters the view taken by the Ex. Engineer should be preferred, having regard to his special knowledge. The course suggested at A above is the most reasonable in the circumstances.

Secy P.W.D. (R.L.A.)

This Dept may agree with the view taken by R.L.A. @ 13/10

9429 d. 6 $\frac{10}{48}$ Scy (R.L.B.) M/T

Chronological Statement of Facts.

The plaintiff in this suit prays for an order against Government directing them to repair the damaged wall of his godown taken on hire by Government or in the alternative a sum of Rs. 1,200/- as costs for repairing the wall.

2. The plaintiff is the owner of a godown of the dimensions of 44' x 41' x 20' having a capacity of 8000 bags, in the village of Indi, District Bijapur. In 1943 the District Magistrate, Bijapur took the godown on hire on a rent of Rs. 25/- per month. In 1944 the rent was increased to Rs. 30/- per month at the owner's request.

3. During 1943 and 1944 jowar packed in bags was stored in the godown. In 1945 however a stock of about 6000 bags of jowar was stored in the godown in bulk upto a height of about 15 feet probably with a view to prevent deterioration in bags.

4. Some days later the Mamlatdar of Indi inspected the godown and noticed that the north eastern wall of the godown had bulged out probably on account of the swelling of the grain and that there was also a crack on it. He immediately reported the facts to the District Magistrate on 3rd October 1945 and the District Magistrate directed on 5th October 1945 that the grain should be removed from the godown forth with. The District Magistrate's order was carried out.

5. On 17th June 1946 the plaintiff sent a notice to the Collector under section 80 of the Civil Procedure Code demanding that the damaged wall be repaired at Government's cost or the plaintiff be paid Rs. 1200/- as costs of repairs. Enquiries made by the Prant Officer and the Executive Engineer revealed that the crack had appeared due to the fact that the damaged portion of the wall was only 1'-3" thick while the other walls were 2' to 4'-3" in thickness and that this fact was not known to the local officers when the grain was stored in the godown. In these circumstances the plaintiff's claim for compensation was rejected.

6. The plaintiff thereupon gave fresh notice of suit

under section 80 of the Civil Procedure Code on
28th June 1947 and on 6th July 1948 he filed the
present suit in the Court of the Civil Judge,
Senior Division Bijapur.

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Grounds of Defence.

1. It is no doubt true that the wall was cracked due to the pressure of loose corn stored in the godown. But it seems that the damage would not have occurred if all the walls of the godown were of uniform thickness. While the remaining three walls were 2' to 4'-3" ^{in thickness}, the damaged wall was only 1'-3" ^{thick}. This was a material defect in the godown which was not brought to the notice of the local officers when plaintiff leased the godown to them. Under s. 108 (a) of the Transfer of Property Act the lessee is required to use the property as a man of ordinary prudence would use it if it is his own. He must not use the property for a purpose other than that for which it was leased. The plaintiff admits that the godown was required for storing jowar and the grain was actually stored in it at first in bags and then loose. The plaintiff does not allege that the jowar was to be stored in a particular way. It is therefore clear that damage was due to the insufficient thickness of the wall which could not withstand the pressure of the corn inside. Section 108 (a) of the Transfer of Property Act requires that the lessor is bound to disclose to the lessee any material defect in the property with reference to its intended use of which the former is and the latter is not aware and which the latter could not with ordinary care discover. The plaintiff must be deemed to be aware of the defect in the wall which the Government officers could not have known or could not have discovered with ordinary care. The plaintiff did not disclose this fact to them. Consequently he is not entitled to any compensation.

2. Without prejudice to the foregoing contention it should be urged that claim of Rs. 1200/- is excessive and highly exaggerated. Plaintiff should be put to strict proof of it.

Exhibit No.1. Civil Suit No. 275 of 1944

In the Court of the Civil Judge, Senior Division,

At Bijapur.

1. Pulchand Gulabchand Doshi, 58,

Jain, Trader of Indi District

Bijapur. plaintiff.

Vs.

1. The Bombay Province. defendant.

In this the plaintiff begs to state as follows:

1. The applicant owns C.S.No.560 at Indi. It consists of shops and godown. The godown was leased to the Collector and District Magistrate through the Mamlatdar of Indi for storing jawar in December 1942 at a rent of Rs.300/- a year for subsequent years. For two years Jawar, filled in gunny bags was stored by the Government in that godown. But in 1945 Jawar about 6000 bags was loosely stored. It had not been filled in bags. On account of the swelling of the jawar the northern wall gave way and damage is caused to plaintiff's wall on or about 3-10-1945. The broken wall was immediately pointed out to the Mamlatdar of Indi. On account of negligent and indiscriminate use of the godown in storing loose jawar in large quantity by the responsible govt. Officers, great damage is caused to plaintiff. Although applications were made to the Collector to rebuild the wall at Government costs or pay adequate compensation to the plaintiff to rebuild it, nothing has been done till now.

2. In reply to the application of the plaintiff dated 17-6-1946 the Collector and District Magistrate has informed the plaintiff by his letter dated 2-1-1947 that the damage was caused on account of the insufficient width of the wall. This defect in the wall was not brought to the notice of the local authorities nor was it such could be discovered with ordinary care and hence the plaintiff is not entitled to any compensation.

3. The northern wall in question is built about 12

years ago in stone and mortar and is 16 inches in width. It was sufficiently strong. The plaintiff could not know about its strength to inform the authorities even to withstand the wrong use of the godown. It had stood well and served its purpose for nearly thirteen years before. Nothing happened for two years when it was in the possession of Government and Jawar was stored there filled in janny bags. Damage is caused only because Jawar was loosely stored by the Government Officers negligently who could and ought to have ascertained whether the walls were strong enough to withstand the bulge out of the Jawar loosely stored. They did not even inform the plaintiff that they were going to use that godown in that way. They should have known that it was not a pit when Jawar could be stored in loose quantity but a godown where such a large quantity ~~but~~ of Jawar is never stored loosely. It is the utter negligence on the part of Government officers in misusing the godown that has caused damage to plaintiff. Hence the Government is liable to pay the damages or repair the wall to its former condition before handing over its possession to plaintiff. The possession of the said godown was given to plaintiff about 28-10-41. The cost of rebuilding the wall comes to about Rs.1200/- and the Govt. is bound to compensate the plaintiff to that extent. Hence the suit to recover this amount of damages from the Govt. or to get his wall rebuilt by the Govt. at its own cost.)

5. Cause of action arose at Indir on or about 8-1-1947, when the Govt. refused to pay damages, within the jurisdiction of this court.

6. Claim is valued at Rs.1200/- the amount of damages claimed to rebuild the wall.

7. A notice under section 80 C.P.C. has been served on the Collector Bijapur on 1-7-1947, regarding the claim.

The plaintiff prays that:-

a). The defendant may be ordered to rebuild the wall at their own cost.

(b). Or Rs.1200/- should be ordered to be paid to plaintiff by the Defendant as compensation for building that wall.

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Costs of this suit be awarded to plaintiff from defendant.

Bijapur.

Sd/- in Modi.

Date 8-7-1948

Herein I Gulchana Guiswanand Wosni, 38, Jain, trader of Indi District Bijapur do solemnly affirm that what is stated in paras 1 to 3 above are true to the best of my knowledge and belief.

Bijapur.

Sd. Modi.

Filed in court on 14-7-1948.

Sd. K.S. Deshpande.

Pleader for plaintiff.

Order.

Privately compromised. Dismissed. No order as to costs.

11-8-1948

Sd. A.C. Sequera.

Civil Judge Sr. Bn. Bijapur.

Bill of Costs.

Plaintiff.	Rs. As. P.	Defendant.	Rs. As. P.
1. For plaint.	106-4-0.	1. For exhibits Nos. 7, 8, 9, 10, 11, 12.	3-12-0.
2. Vakaltanama.	0-10-0.	2. Pleader's fee on Rs. 1200/-	15-0-0.
3. Process fee.	2-0-0.		
4. Pleader's fee on Rs. 1200/-	15-0-0.		
Total Rs.	123-14-0.	Total Rs.	18-12-0.

Dated 11th June 1949.

Sd. N.R. Padatane:
Clerk.

Sd. A.C. Sequera.
Civil Judge Sr. Bn. Bijapur.

" True Copy "

K. N. N.
District Govt. Pleader, Bijapur.
12-6-1949.